SWAMINATHAN MUTHALIAPPAN *a*

v.

GOLDEN PLAZA DEVELOPMENT PTE. LTD. & ANOR.

HIGH COURT, SINGAPORE
CHAO HICK TIN JC
[SUIT NO. 1584 OF 1984]
12 JANUARY 1990 *b*

CIVIL PROCEDURE: *Interim injunction granted to plaintiff - Further restraining order - Hearing of motion - Further order of Court granting continuation of interim injunction - Variation of order - Plaintiff to provide security for damages - Status quo - Motion by defendants that plaintiff should continue to make monthly payments - Application for adjournment - Whether Court to sanction - Order that arrears be paid into Court - Whether plaintiff taking undue advantage of interim injunction.* *c*

LANDLORD AND TENANT: *Claim by plaintiff that he is the tenant - Payment of rental and hiring charges for grinding machines - Whether premises subject to Control of Rent Act - Allegation that defendant entered premises and prevented plaintiff from carrying on his business - Injunction - Restraining order by Court - Security for damages - Whether a tenancy had been created by virtue of 3 agreements.* *d*

This was an action by the plaintiff seeking a declaration that he is a tenant of the premises and is protected under the Control of Rent Act. The plaintiff further sought an injunction restraining the defendants from preventing him, his servants and customers from entering the premises or interfering with his business. *e*

Subsequently, on 23 March 1984, the Court made several orders, the effect of which was to retain the *status quo* of the parties.

From the facts of the case, it came to light that the plaintiff occupied the premises as a result of three agreements. The main issue here, which the Court had to decide, at the trial, was whether by virtue of the agreements and taking into account all the relevant circumstances, a tenancy of the premises was created in favour of the plaintiff. *f*

The defendant applied by way of notice of motion to vary the Court order of 23 March 1984.

Held:

[1] The Court was not inclined to sanction dilatoriness or procedures which were intended to cause delay. *g*

[2] The plaintiff must comply with the terms of the agreements.

[3] The plaintiff had obtained an interim injunction to preserve the *status quo* yet he refuses to pay the agreed sum. This was not right.

[4] The request by the defendant to have the monthly sums to be paid to their solicitors as stakeholders is the fairest way to safeguard the position of the parties. *h*

[Order accordingly.]

For the plaintiff - Krishnan
For the defendants - Andrew Chua

i

JUDGMENT

Chao Hick Tin JC:

The plaintiff claims to be a tenant since March 1981 of the ground floor of a shophouse at No. 141 Syed Alwi Road, Singapore ("the premises") paying therefore a rent of $1,500 per month, which includes the hiring of six grinding machines. He alleges that the premises are subject to the Control of Rent Act and he is a protected tenant. He says that he runs three businesses on the premises, viz, grinding mill operations; transport and handling; and hotel runner.

The defendants are property developers and had on 2 March 1984 (conveyance was dated 5 March 1984) bought No. 141, Syed Alwi Road from the previous owner, one Ram Darash Singh.

The plaintiff alleges that sometime on 9 March 1984, the defendants forcibly entered into the premises and wrongfully locked out the plaintiff and prevented him from carrying on his businesses. In view of that the plaintiff instituted this action for a declaration that he is a tenant of the premises and is protected under the Control of Rent Act. He also seeks an injunction restraining the defendants from preventing him, his servants and customers from entering the premises or interfering with his business.

The defendants say that they purchased No. 141 Syed Alwi Road from the previous owner with vacant possession. An inspection was done and the premises were found to be vacant. They also bought over five of the six grinding machines which were in working condition for $15,000. In view of what is alleged by the plaintiff, the defendants brought in the previous owner as a third party to these proceedings.

On 16 March 1984, by way of an *ex-parte* application, an interim injunction was granted in favour of the plaintiff restraining the defendants:

(i) from preventing the plaintiff, his family, agents, servants and customers from entering the premises;

(ii) from interfering in any way with the business activities of the plaintiff conducted on the premises;

(iii) from denying supplies of water and electricity to the premises.

Subsequently on 23 March 1984, on the hearing of a motion by the plaintiff as well as another motion by the defendants, it was ordered as a temporary measure pending fuller arguments, that the premises be locked up by the defendants and both parties "be restrained from entering until further order". Both parties were also restrained "from removing any or all times of machinery now lying in the premises until further order". The Court also ordered that the plaintiff's and defendants' motions be adjourned to a date to be fixed.

When both the motions came up for hearing on 25 April 1984, the Court gave an order which in effect continues the interim injunction granted on 16 March 1984. The Court also varied the order of 23 March 1984 in this manner:

(a) that the order that the premises ... be locked up by the defendants and both parties, their servants and agents be restrained from entering therein until further order be and is hereby discharged;

(b) that the order that the plaintiff and defendants and their servants and agents be restrained from removing any or all items of machinery now lying in the said premises until further order shall stand.

The Court further ordered that the plaintiff provides a banker's guarantee in favour of the Registrar, High Court, in the sum of $15,000 as security for damages. The effect of these orders made on 25 April 1984 is that the *status quo* as between the parties shall continue.

It appears that from or soon after 25 April 1984, the plaintiff resumed occupation of the premises and continued his businesses thereat. He made the monthly payment of $1,500 to the defendants up to December 1985. However, the plaintiff ceased to make any payment since January 1986.

It is clear that the plaintiff's occupation of the premises was as a result of three agreements, each of 12 month's duration, entered into between the plaintiff and the third party. The first of the agreements was dated 26 February 1981, to be effective on 1 March 1981. By these agreements, the third party hired out to the plaintiff the use of the six grinding machines as well as granted him a licence to have access to the premises between the hours of 8am to 8pm daily for the purposes of operating the machines. Under the first agreement the monthly payment was initially $1,200. This was raised to $1,500 under the third agreement. The agreements expressly provided that "the (plaintiff's) right to enter and remain in the said space between the hours of 8am and 8pm each day is only incidental to his right to operate the said machinery and does not confer any relationship of landlord and tenant between the parties hereto". The third agreement was to expire on 29 February 1984. By a notice issued on 21 December 1983, the plaintiff was informed that the agreement would not be renewed. The main issue which the Court will have to decide at the trial is whether, by virtue of the agreements and taking into account all the relevant circumstances, a tenancy of the premises has been created in favour of the plaintiff.

By way of a notice of motion filed on 23 October 1989, Counsel for the defendants moved for the following orders:

1. The order of Court for Interlocutory Injunction made on the 25 April 1984 (and varying the order of Court made on the 23 March 1984) be varied by inclusion of the following orders:

   (a) that the plaintiff do pay to the defendants' solicitors, M/s Tan Kim Seng & Partners as stakeholders, the sum of $67,500 ($1,500 x 45 months calculated from January 1986 to October 1989), pending the outcome of the action herein or until further order; and

   (b) that the plaintiff do each month from 1 November 1989 be ordered to pay the defendants' solicitors, M/s. Tan Kim Seng & Partners as stakeholders, the sum of $1,500 per month, pending the outcome of the action herein or until further order.

2. The costs of this application be paid by the plaintiff to the defendants.

The reason advanced by the defendants to require the plaintiff to make the monthly payment for the use of the machines as well as the licence to have access to the area where the machines are located, is that the plaintiff by obtaining an interim injunction to preserve the *status quo* should continue to pay the agreed sum as it falls due. Further, if the plaintiff should fail in his action, the defendants would not only have suffered loss in not being able to proceed with their re-development plans, there is no guarantee that they would be able to recover the arrears.

When this motion came up before me on 17 November 1989, Counsel for the plaintiff applied for a two weeks' adjournment on the ground that the plaintiff would like to file an affidavit in reply. He said the plaintiff has also made a proposal but had not received any response from the defendants. He also mentioned that there were some figures to be worked out. However, Counsel for the defendants objected to any adjournment alleging that this was

another of the plaintiff's delaying tactics. He emphasised that the plaintiff was taking advantage of the situation: using the machines and having access to the premises, yet refusing to pay anything.

I refused the application for an adjournment. The motion and the affidavit in support were filed by the defendants on 23 October 1989. I felt that there was ample time for the plaintiff to file an affidavit in reply if he seriously wanted to. I was not inclined to sanction dilatoriness or procedures which intended to cause delay.

On the application in the motion, Counsel for the plaintiff told the Court that the plaintiff was prepared to pay the arrears into Court within four weeks instead of paying to the solicitors for the defendants as prayed for in the motion. I accordingly granted an order in terms of prayers 1(a) and (b) with the variation that the arrears be paid into Court within four weeks. The monthly sum should also be paid into Court as and when it falls due. I am therefore surprised at the appeal lodged by the plaintiff against the order I have made.

I would nevertheless add that even if Counsel for the plaintiff had not indicated his client's readiness to pay into Court, I would have been inclined to make the order. Here you have a plaintiff who claims to be the tenant of the premises and who also hires from the owner six grinding machines and in respect of both matters he agrees to pay a monthly sum of $1,500. He seeks protection under the Control of Rent Act. He wants to carry on occupying the premises and using the machines for his business. He obtains an interim injunction to preserve the *status quo*. Yet he refuses to pay the agreed sum. This clearly cannot be right. It is grossly unjust, bearing in mind that the defendants are not even asking that the monthly sum be paid to them. They are asking that it be paid to their solicitors who will hold it as stakeholders. This will not prejudice the position of any party. It is in fact the fairest way to safeguard the position of both parties.

It seems to me that the plaintiff is trying to take undue advantage of the interim injunction which he has obtained. In all fairness, the plaintiff, having come to Court and obtained interim reliefs effectively on the basis of an agreement, must himself comply with the terms of the agreement.

In an earlier affidavit filed by the plaintiff (which is unrelated to this motion), it was mentioned that the proper rent due in respect of the premises should only be $130 based on the annual value assessed by the Property Tax Department. But it must be remembered that the amount agreed to is not only for the occupation of the premises (or as the defendants put it, a licence to have access to the premises) but also for the use or hire of the six grinding machines. Be that as it may, I must observe that it has not been pleaded in the statement of claim that the agreed sum of $1,500 may be improper or unlawful. It is therefore not in issue. Even assuming that the plaintiff applies and succeeds in obtaining leave of Court to amend his pleadings and also assuming that he succeeds in persuading the trial Judge that the correct rent/sum due to the defendants is not $1,500 but only $130, I do not see how his position is in any way prejudiced; he would be able to recover whatever excess from the stakeholder.

For the record, I would just note in passing that on 23 November 1989, on the application of the defendants, I heard the parties on the question of costs. This was inadvertently overlooked on the hearing on 17 November 1989. I ordered that costs be in the cause. At the request of the defendants, a minor amendment was also made in connection with prayer 1(b). The plaintiff had no objection to it.

Also found at [1990] 1 CLJ 859